

STATE OF WASHINGTON  
WHATCOM COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

NO.

**AFFIDAVIT FOR DETERMINATION  
OF PROBABLE CAUSE**

JAMES ALPHA BROWN

Defendant.

Gregory D. Mixsell, being first duly sworn upon oath deposes and states:

15 I am an investigator with the Criminal Justice Division of the Attorney General's  
16 Office (AGO-CJD) for the State of Washington. I am familiar with the investigation of Port  
17 Investments, Inc. and James Alpha Brown, a resident of Bellingham, Washington and the  
18 former owner/operator of Bayside Café in Bellingham, Washington. The investigation was  
19 conducted by the AGO-CJD in Seattle, in conjunction with the State of Washington  
20 Department of Revenue (DOR).

21 I have been employed as an investigator with the AGO-CJD since April, 2008. Before  
22 joining the AGO-CJD, I was employed for twenty-six years as a police officer/detective with  
23 the Seattle Police Department. In twenty-two years as a detective, I was assigned to  
24 investigate crimes of sexual assault, robbery and homicide.

25 As an investigator with the AGO-CJD, I have as one of my primary responsibilities the  
26 investigation of tax fraud in which the State of Washington Department of Revenue and other

1 State agencies are the victims. I am familiar with the facts and circumstances contained in this  
2 certification, either through personal investigation or through personal discussions with DOR  
3 personnel who have obtained information in the normal course of their duties. The  
4 investigation of Port Investments, Inc., and James Alpha Brown has primarily been conducted  
5 in conjunction with personnel from the DOR. The reports of this investigation contained the  
6 following information, upon which this Affidavit for Determination of Probable Cause is  
7 based.

8 All individuals and business entities wishing to conduct business in the State of  
9 Washington must file a Master Business License and receive a Unified Business Identifier  
10 prior to engaging in business. If the business (taxpayer) intends to engage in activity subject to  
11 retail sales tax, the business must also obtain a Certificate of Registration from the DOR.  
12 Businesses that are engaged in the sales of retail goods and personal property in the State of  
13 Washington are required to collect Washington State sales and other applicable taxes from  
14 their customers.

15 RCW 82.08.050 requires the seller to collect retail sales tax, which is "deemed to be  
16 held in trust by the seller until paid to the department (DOR)". Businesses are required to  
17 report their gross receipts from the retail sales and remit the appropriate amount of sales tax by  
18 the due date of the tax return for the reporting period. Main Street Ale House and the Olympic  
19 Timberhouse Restaurant were required to file Combined Excise Tax Returns (CETRs) on a  
20 monthly basis.

21 Port Investments, Inc. was previously operating as the business Marina Seafood  
22 Broiler, a restaurant, doing business as The Marina, which was opened and had an account  
23 with the DOR from December 1987 through October, 1997. A DOR audit was completed on  
24 this entity for business conducted from January 1, 1990 through June 30, 1994. The audit  
25 resulted in an assessment of approximately \$211,100.00 due to understated income. This  
26 businesses account was closed with the DOR on October 31, 1997.

1 Port Investments, Inc., now doing business as Bayside Café, opened an account with  
2 the DOR on November 1, 1997. The DOR assigned a uniform business identifier to Port  
3 Investments Inc., doing business as (dba) Bayside Café. James Alpha Brown was the sole  
4 member and held the title of all officers of Port Investments, Inc. Bayside Café operated as a  
5 restaurant in Bellingham, Washington. The restaurant offered breakfast, lunch and dinner  
6 menus, and served beer, liquor and wine.

7 The DOR audited Port Investments, Inc. and the Bayside Café in early 2001. The DOR  
8 found the business was in compliance with reporting collected retail sales tax. This was  
9 evidence that James Alpha Brown understood his responsibility to report and remit under the  
10 retailing and retail sales tax classification.

11 A compliance audit was conducted by the DOR with the objective of verifying that  
12 selected Washington State business activities and transactions were properly reported on the  
13 combined excise tax returns (CETRs) for this new entity, Bayside Café, for the period  
14 January 1, 2008 through March 31, 2012. The DOR audit examined and reviewed the Port  
15 Investment Inc. dba Bayside Café's combined excise tax returns filed with the DOR. These  
16 returns report gross amount of sales, taxable amount of sales, and both state and local sales tax  
17 due to the DOR. All of the CETRs were completed and filed with the DOR by James Alpha  
18 Brown. The DOR examined and reviewed Bayside Café's point of sale restaurant computer  
19 sales summaries, which detailed product sales by category, total gross product sales, total net  
20 product sales and total sales taxes collected. The DOR also examined the business bank  
21 account records for Port Investment Inc., dba Bayside Café, which included deposits. James  
22 Alpha Brown was the sole signer on the business bank account. The DOR also examined US  
23 Corporation Income Tax Returns filed by James Alpha Brown for Port Investments Inc., for  
24 2007, 2008, 2009 and 2010, provided by James Alpha Brown.

25 The audit found that James Alpha Brown and Port Investments Inc. dba Bayside Café  
26 reported approximately 27 percent of retail sales to the DOR and remitted approximately

1 27 percent of retail sales tax collected. Collected and unremitted retail sales tax during the  
2 audit period totaled as least \$286,157.14.

3 A summary of net reported revenue, actual net revenue, unreported revenue, retail sales  
4 tax collected, retail sales tax reported and unremitted retail sales tax by month, is found in the  
5 table below:

Month/ Yr.	Net Revenue Report	Net Revenue Actual	Unreported Revenue	Sales Tax Collected	Sales Tax Reported	Unremitted Sales Tax	Date Tax Return Filed
Jan-12	\$18,703.25	\$76,248.30	\$57,545.05	\$6,606.33	\$1,627.18	\$4,979.15	2/27/12
Feb-12	\$22,062.46	\$88,517.73	\$66,455.27	\$7,685.75	\$1,919.43	\$5,766.32	3/26/12
Mar-12	\$23,873.40	\$95,867.31	\$71,993.91	\$8,319.99	\$2,076.98	\$6,243.01	4/25/12
<b>Total 2012</b>	<b>64,639.11</b>	<b>260,633.34</b>	<b>195,994.23</b>	<b>22,612.07</b>	<b>5,623.59</b>	<b>16,988.48</b>	
Jan-11	\$18,655.66	\$75,167.11	\$56,511.45	\$6,361.98	\$1,585.73	\$4,776.25	2/25/11
Feb-11	\$19,042.13	\$76,493.00	\$57,450.87	\$6,487.29	\$1,618.58	\$4,868.71	3/25/11
Mar-11	\$24,086.73	\$89,259.87	\$65,173.14	\$7,537.08	\$2,047.37	\$5,489.71	5/28/11
Apr-11	\$22,069.35	\$95,554.03	\$73,484.68	\$8,287.45	\$1,920.04	\$6,367.41	6/27/11
May-11	\$24,302.74	\$108,407.18	\$84,104.44	\$9,397.45	\$2,114.34	\$7,283.11	7/23/11
Jun-11	\$25,912.27	\$104,114.40	\$78,202.13	\$9,017.69	\$2,254.37	\$6,763.32	7/23/11
Jul-11	\$24,786.59	\$124,305.31	\$99,518.72	\$10,808.35	\$2,156.43	\$8,651.92	8/25/11
Aug-11	\$20,918.39	\$125,487.30	\$104,568.91	\$10,873.33	\$1,819.90	\$9,053.43	9/26/11
Sep-11	\$19,723.55	\$109,852.42	\$90,128.87	\$9,512.25	\$1,715.95	\$7,796.30	10/25/11
Oct-11	\$18,276.13	\$92,095.82	\$73,819.69	\$7,975.31	\$1,590.02	\$6,385.29	11/28/11
Nov-11	\$19,078.40	\$76,911.07	\$57,832.67	\$6,662.13	\$1,659.82	\$5,002.31	12/26/11
Dec-11	\$20,371.56	\$93,744.75	\$73,373.19	\$7,306.32	\$1,772.32	\$5,534.00	1/25/12
<b>Total 2011</b>	<b>257,223.50</b>	<b>171,391.26</b>	<b>914,168.76</b>	<b>100,226.63</b>	<b>22,254.87</b>	<b>77,971.76</b>	
Jan-10	\$19,444.54	\$78,269.80	\$58,825.26	\$6,619.06	\$1,652.79	\$4,966.27	2/25/10
Feb-10	\$20,714.34	\$79,217.30	\$58,502.96	\$6,718.82	\$1,760.72	\$4,958.10	3/25/10
Mar-10	\$21,507.31	\$86,465.30	\$64,957.99	\$7,321.99	\$1,828.13	\$5,493.86	4/25/10
Apr-10	\$21,874.85	\$87,798.90	\$65,924.05	\$7,454.34	\$1,859.37	\$5,594.97	5/24/10
May-10	\$26,486.51	\$106,216.40	\$79,729.89	\$9,025.78	\$2,251.35	\$6,774.43	6/24/10
Jun-10	\$23,935.92	\$96,135.30	\$72,199.38	\$8,148.52	\$2,034.55	\$6,113.97	7/26/10
Jul-10	\$28,502.36	\$114,512.77	\$86,010.41	\$9,714.39	\$2,422.70	\$7,291.69	8/31/10
Aug-10	\$27,569.95	\$110,692.12	\$83,122.17	\$9,388.61	\$2,343.45	\$7,045.16	9/25/10
Sep-10	\$21,670.24	\$87,552.45	\$65,882.21	\$7,404.35	\$1,841.97	\$5,562.38	10/25/10
Oct-10	\$19,880.83	\$83,655.28	\$67,774.45	\$7,098.75	\$1,689.87	\$5,408.88	11/26/10
Nov-10	\$15,985.55	\$64,379.74	\$48,394.19	\$5,449.20	\$1,358.77	\$4,090.43	12/26/10

1	Dec-10	\$18,679.51	\$83,437.15	\$64,757.64	\$6,484.72	\$1,587.76	\$4,896.96	1/25/11
2	<b>Total 2010</b>	<b>266,251.91</b>	<b>1,078,332.51</b>	<b>816,080.60</b>	<b>90,828.53</b>	<b>22,631.43</b>	<b>68,197.10</b>	
3	Jan-09	\$19,800.47	\$72,502.40	\$52,701.93	\$6,134.38	\$1,683.04	\$4,451.34	3/31/09
4	Feb-09	\$23,401.87	\$78,342.70	\$54,940.83	\$6,638.92	\$1,989.16	\$4,649.76	4/30/09
5	Mar-09	\$24,295.18	\$81,361.45	\$57,066.27	\$6,887.76	\$2,065.09	\$4,822.67	5/31/09
6	Apr-09	\$25,467.62	\$85,372.47	\$59,904.85	\$7,220.61	\$2,164.75	\$5,055.86	6/30/09
7	May-09	\$26,113.56	\$104,688.37	\$78,574.81	\$8,885.03	\$2,219.65	\$6,665.38	7/31/09
8	Jun-09	\$24,484.00	\$98,357.65	\$73,873.65	\$8,333.44	\$2,081.14	\$6,252.30	8/31/09
9	Jul-09	\$28,107.86	\$113,134.35	\$85,026.49	\$9,599.90	\$2,389.17	\$7,210.73	8/31/09
10	Aug-09	\$25,718.90	\$103,410.50	\$77,691.60	\$8,758.31	\$2,186.11	\$6,572.20	9/25/09
11	Sep-09	\$22,686.72	\$91,166.71	\$68,479.99	\$7,723.14	\$1,928.11	\$5,795.03	10/26/09
12	Oct-09	\$19,880.83	\$79,582.05	\$59,701.22	\$6,750.86	\$1,689.87	\$5,060.99	11/25/09
13	Nov-09	\$17,159.39	\$68,904.87	\$51,745.48	\$5,846.97	\$1,458.55	\$4,388.42	12/28/09
14	Dec-09	\$18,020.82	\$79,060.87	\$61,040.05	\$6,255.90	\$1,531.77	\$4,724.13	1/25/10
15	<b>Total 2009</b>	<b>275,137.22</b>	<b>1,055,884.39</b>	<b>780,747.17</b>	<b>89,035.22</b>	<b>23,386.41</b>	<b>65,648.81</b>	
16	Jan-08	\$30,385.79	\$67,836.05	\$37,450.26	\$5,698.23	\$2,552.41	\$3,145.82	3/31/08
17	Feb-08	\$37,276.07	\$82,787.12	\$45,511.05	\$6,954.12	\$2,958.97	\$3,995.15	4/30/08
18	Mar-08	\$35,225.82	\$82,948.00	\$47,722.18	\$6,967.63	\$3,244.43	\$3,723.20	5/30/08
19	Apr-08	\$38,624.23	\$85,654.40	\$47,030.17	\$7,194.97	\$3,812.94	\$3,383.03	6/30/08
20	May-08	\$45,632.78	\$101,378.74	\$55,745.96	\$8,515.81	\$2,914.09	\$5,601.72	7/31/08
21	Jun-08	\$34,691.56	\$99,118.73	\$64,427.17	\$8,325.97	\$3,187.15	\$5,138.82	8/31/08
22	Jul-08	\$37,942.33	\$109,087.63	\$71,145.30	\$9,163.36	\$2,591.56	\$6,571.80	9/30/08
23	Aug-08	\$30,851.91	\$102,839.71	\$71,987.80	\$8,638.54	\$1,922.44	\$6,716.10	10/31/08
24	Sep-08	\$22,886.17	\$91,934.95	\$69,048.78	\$7,709.18	\$1,658.47	\$6,050.71	10/30/08
25	Oct-08	\$19,743.76	\$79,601.75	\$59,857.99	\$6,634.26	\$1,608.84	\$5,025.42	12/31/08
26	Nov-08	\$19,152.89	\$77,065.14	\$57,912.25	\$6,471.79	\$1,735.06	\$4,736.73	1/31/09
27	Dec-08	\$20,655.51	\$61,911.37	\$41,255.86	\$4,997.55	\$1,735.06	\$3,262.49	2/29/09
28	<b>Total 2008</b>	<b>373,068.82</b>	<b>1,042,163.59</b>	<b>669,094.77</b>	<b>87,271.41</b>	<b>29,921.42</b>	<b>57,350.99</b>	

20 Year Total Collected and Unremitted Retail Sales Tax per Year

21 2008 \$57,350.99

22 2009 \$65,648.81

23 2010 \$68,197.10

24 2011 \$77,971.76

25 2012 \$16,988.48

26 **Total \$286,157.14**

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1        During an exit conference held at the Department of Revenue on September 10, 2012  
2 and following the compliance audit, James Alpha Brown was interviewed by the DOR. He  
3 was asked about the underreporting of retail sales and failing to remit to the DOR collected  
4 retail sales tax. James Alpha Brown stated he “estimated” taxable income on the CETRs and  
5 that business records detailing the income received during the reporting period were not used  
6 to complete the excise tax returns, that he used the monies to operate his business. Further,  
7 James Alpha Brown indicated that his business had undergone financial difficulties and that  
8 some monies collected from doing business were used for payment of family member’s  
9 salaries.

10       On February 28th, 2013, the Honorable David S. McEachran, Whatcom County  
11 Prosecuting Attorney, granted the Washington State Office of the Attorney General concurrent  
12 authority to investigate this case and to initiate and conduct any prosecution arising from said  
13 investigation. James Alpha Brown was a resident of Bellingham, Whatcom County,  
14 Washington, during the DOR audit period.

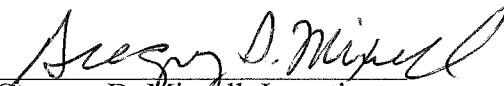
15       James Alpha Brown collected and failed to remit to the DOR retail sales tax on sales  
16 of food and beverage at Bayside Cafe in an amount totaling at least \$286,157.14, in violation  
17 of RCW 9A.56.030. James Alpha Brown exerted unauthorized control of these trust fund  
18 taxes belonging to the State of Washington. These trust fund taxes were rightfully paid to the  
19 Bayside Cafe by its customers, with the belief that the owner(s) would forward them to the  
20 Washington State Department of Revenue as required by law.

21       Port Investments, Inc., dba Bayside Café, was required to submit and file CETRs on a  
22 monthly basis. During the audit period, January 2008 through March 2012, James Alpha  
23 Brown prepared and filed either handwritten or electronically filed CETR’s for Port  
24 Investments Inc., dba Bayside Café, with the DOR. He did not report all sales during any  
25 month in the audit period, filing fifty-one (51) false or fraudulent combined excise tax returns,  
26 in violation of RCW 82.32.290(2)(a)(i).

1      Based upon my information and belief, Port Investments, Inc, dba Bayside Café, was  
2 headquartered in Whatcom County, and all of the above acts and/or omissions occurred in  
3 Whatcom County, State of Washington.

4      I certified under penalty of perjury under the laws of the State of Washington that the  
5 foregoing is true and correct.

6      DATED 12<sup>th</sup> day of March, 2013.

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9      Gregory D. Mixsell, Investigator  
10     Criminal Justice Division  
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